SUPREME COURT, U. S.

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1346

UNITED MINE WORKERS OF AMERICA,
Petitioner,

vs.

RIVERTON COAL COMPANY and DAVISON FUEL AND DOCK COMPANY,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

J. MACK SWIGERT
ROBERT J. TOWNSEND
600 Dixie Terminal Building
Cincinnati, Ohio 45202
Attorneys for Respondents

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, 421-3030

INDEX

QUESTIONS PRESENTED 1
STATUTORY PROVISIONS INVOLVED 3
STATEMENT OF THE CASE 6
A. The Parties 6
B. Respondent Riverton's History of Purchasing Coal 7
C. The Events of 1963 9
D. The 1964 Strike and Collective Bargaining Agreement 9
E. The 1966 Strike and Collective Bargaining Agreement 14
F. The Impact of the 80-Cent Penalty and Coal Lands Clauses 16
G. The Decision of the District Court 19
H. The Decision of the Court of Appeals 21
SUMMARY OF ARGUMENT 22
REASONS FOR DENYING THE WRIT 25
1. On the Facts Found by the District Court, Riverton and Davison Were Entitled to Judgment As a Matter of Law 25
a. The UMW coerced Riverton and Davison 25
b. The UMW coercion had secondary objects 30
c. Davison is a proper party 36
2. The Court of Appeals Decision Does Not Conflict with Applicable Decisions of This Court 38
a. There is no conflict with *National Woodwork Manufacturers Association* v. *NLRB* 38
b. There is no conflict with the *Coronado* decisions 42
c. There is no conflict with *NLRB* v. *Truck Drivers Local 449* 45

3. There Is No Conflict Between the Circuits on the Same Matter 46
CONCLUSION 50

TABLE OF CASES

Busby v. *Electric Utility Employees' Union* (CA D.C., 1945) 147 F. 2d 865 48
Coronado Coal Co. v. *UMW* (1925) 268 U.S. 965 ..... 42, 44
Dixie Mining Co. v. *NLRB*, Case No. 23,947 47
Fibreboard Paper Products Corp. v. *NLRB* (1964) 379 U.S. 203 42
Garmeada Coal Co. v. *UMW* (CA 6, 1956) 230 F. 2d 945 (D.C. E.D. Ky., 1954) 122 F. Supp. 512 49
Harnischfeger Corp. v. *Sheet Metal Workers* (CA 6, 1970) 436 F. 2d 351 49
IBEW v. *NLRB* (1957) 341 U.S. 694 27
International Longshoremen's Union v. *Juneau Spruce Corp.* (1952) 342 U.S. 847 46
Lewis v. *Benedict Coal Co.* (CA 6, 1958) 259 F. 2d 346, mod. on other gds. (1960) 361 U.S. 459 44
Raymond O. Lewis, et al. (1964) 148 NLRB 249 47
Meat Cutters Local 421 (1949) 81 NLRB 1052 44
Morgan Driveway, Inc. v. *Teamsters* (CA 7, 1959) 268 F. 2d 871 48
NLRB v. *Deena Artware, Inc.* (CA 6, 1952) 198 F. 2d 845, cert. den. (1953) 345 U.S. 906 47
NLRB v. *Denver Building Trades Council* (1951) 341 U.S. 675 ..... 22, 24, 34, 40, 41, 42
NLRB v. *Local 825 Operating Engineers* (1971) 400 U.S. 297, 27 L.Ed. 2d 398 34
NLRB v. *Milk Wagon Drivers Local No. 753* (CA 7, 1964) 335 F. 2d 326 35
NLRB v. *New York Lithographers* (CA 3, 1967) 385 F. 2d 551 35

NLRB v. *Truck Drivers Local No. 449* (1957) 353 U.S. 87 45
National Woodwork Mfgrs. Assn. v. *NLRB* (1967) 386 U.S. 612 ..... 38, 39, 40, 41, 42
Old Dutch Farms v. *Milk Drivers* (E.D. N.Y., 1968) 281 F. Supp. 971 47
Old Dutch Farms, Inc. v. *Teamsters Local 584* (CA 2, 1966) 359 F. 2d 598, cert. den. (1966) 385 U.S. 832 47
Pressmen's Local 17 v. *Oregonian Publishing Co.* (D.C. Ore., 1960) 188 F. Supp. 859, aff. (CA 9, 1960) 286 F. 2d 4, cert. den. (1961) 366 U.S. 912 44
Retail Clerks Local 770 v. *NLRB* (CA D.C., 1961) 296 F. 2d 368 ..... 35, 48
Riverside Coal Co. v. *UMW* (CA 6, 1969) 410 F. 2d 267, cert. den. (1969) 396 U.S. 846 27
Teamsters v. *Humko* (CA 6, 1961) 287 F. 2d 231, cert. den. (1961) 366 U.S. 962 30
Teamsters Local 710 v. *NLRB* (CA D.C., 1964) 335 F. 2d 709 48
Tennessee Consolidated Coal Co. v. *UMW* (CA 6, 1969) 416 F. 2d 1192, cert. den. 379 U.S. 964 47
T. S. Ragsdale Co., Inc. v. *Teamsters Local 509* (D.C. S.C., 1972) ..... F. Supp. ....., 79 LRRM 2219 48
United Brick and Clay Workers v. *Deena Artware, Inc.* (CA 6, 1952) 198 F. 2d 637, cert. den. (1952) 344 U.S. 897, rehearing den. (1953) 344 U.S. 199 46-47
UMW v. *Coronado Coal Co.* (1922) 259 U.S. 344 ..... 42, 44
UMW v. *Gibbs* (1966) 383 U.S. 715 44
UMW v. *Osborne Mining Co.* (CA 6, 1960) 279 F. 2d 716, cert. den. (1960) 364 U.S. 881 27
UMW v. *Patton* (CA 4, 1954) 211 F. 2d 742, cert. den. (1954) 348 U.S. 824 ..... 27, 42-43
UMW v. *Pennington* (1965) 381 U.S. 657 ..... 45, 47

United States v. *International Union UMW* (D.C. D.C., 1948) 77 F. Supp. 563, aff. (CA D.C., 1949) 177 F. 2d 29, cert. den. (1949) 338 U.S. 871 44

United States v. *Railroad Trainmen* (N.D. Ill., 1951) 96 F. Supp. 428 44

United Textile Workers v. *Newberry Mills, Inc.* (W.D. S.C., 1965) 238 F. Supp. 366, aff. (CA 4, 1963) 315 F. 2d 217, cert. den. (1963) 375 U.S. 818 44

Vulcan Materials Co. v. *Steelworkers* (CA 5, 1970) 430 F. 2d 446 ..... 29, 44

White Oak Coal Co. v. *UMW* (CA 6, 1963) 318 F. 2d 591, cert. den. 379 U.S. 871 (1964) 27

STATUTES

Labor Management Relations Act, 1947, as amended:

Section 7 [29 USCA 157] 3

Section 8(b)(4)(i)(ii)(A) [29 USCA 158(b)(4)(i)(ii)(A)] 23, 25, 35, 36

Section 8(b)(4)(i)(ii)(B) [29 USCA 158(b)(4)(i)(ii)(B)] 18, 23, 25, 35, 40, 41

Section 8(d) [29 USCA 158(d)] 28

Section 8(e) [29 USCA 158(e)] 23, 35, 36

Section 9(a)(b)(c) [29 USCA 159(a)(b)(c)] 3-4, 18

Section 301(e) [29 USCA 185(e)] 25, 42, 43

Section 302(c)(5) [29 USCA 186(c)(5)] 3, 18

Section 303 [29 USCA 187] 6, 42, 44, 45, 46

Section 303(b) [29 USCA 187(b)] 25

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1346

UNITED MINE WORKERS OF AMERICA,
Petitioner,

vs.

RIVERTON COAL COMPANY and DAVISON FUEL AND DOCK COMPANY,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

QUESTIONS PRESENTED

1. WHETHER THE PETITIONING LABOR ORGANIZATION VIOLATED SECTIONS 8(b)(4)(i)(ii)(B) OF THE LABOR MANAGEMENT RELATIONS ACT, 1947, AS AMENDED, WHEN IT ENGAGED IN, INDUCED AND ENCOURAGED INDIVIDUALS EMPLOYED BY THE RESPONDENT RIVERTON TO ENGAGE IN STRIKES IN 1964 AND 1966 AND ALSO THREATENED, COERCED AND RESTRAINED RIVERTON, AN OBJECT OF WHICH WAS TO REQUIRE RIVER-

TON AND THE RESPONDENT DAVISON TO CEASE USING, SELLING, HANDLING, TRANSPORTING OR OTHERWISE DEALING IN THE PRODUCTS OF OTHER COAL PRODUCERS, TO CEASE DOING BUSINESS WITH SUCH OTHER PERSONS, AND TO FORCE OR REQUIRE SUCH OTHER EMPLOYERS TO RECOGNIZE OR BARGAIN WITH THE PETITIONING LABOR ORGANIZATION AS THE REPRESENTATIVE OF EMPLOYEES OF SUCH OTHER EMPLOYERS AT A TIME WHEN THE PETITIONING LABOR ORGANIZATION HAD NOT BEEN CERTIFIED AS THE REPRESENTATIVE OF SUCH EMPLOYEES UNDER THE PROVISIONS OF SECTION 9 OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED.

2. WHETHER THE PETITIONER VIOLATED SECTION 8(b)(4)(i)(ii)(A) WHEN IT ENGAGED IN THE CONDUCT DESCRIBED IN PARAGRAPH 1 ABOVE WHERE AN OBJECT THEREOF WAS FORCING OR REQUIRING THE RESPONDENT RIVERTON TO ENTER INTO AN AGREEMENT PROHIBITED BY SECTION 8(e) OF THE ACT.

3. WAS THE RESPONDENT DAVISON A PROPER PARTY PLAINTIFF TO THE ACTION BELOW UNDER THE PROVISIONS OF SECTION 303(b) OF THE LABOR MANAGEMENT RELATIONS ACT, 1947?

4. ARE THE DECISION OF THE COURT OF APPEALS AND THE JUDGMENT DIRECTED FOR THE RESPONDENTS SUPPORTED BY SUBSTANTIAL EVIDENCE?

STATUTORY PROVISIONS INVOLVED

In addition to the statutory provisions cited on page 4 of the petition, this case involves Section 302(c)(5) of the Labor Management Relations Act, 1947, which generally forbids the payment of money by an employer to a labor union but also states:

> "The provisions of this section shall not be applicable * * * (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): *Provided*, That * * * (B) the detailed basis on which such payments are to be made is specified in *a written agreement with the employer* * * *." (Emphasis added)

Other pertinent provisions are:

> "Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to *bargain collectively through representatives of their own choosing*, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, *and shall also have the right to refrain from any or all of such activities* except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3)." (Emphasis added)

> "Sec. 9. (a) *Representatives designated or selected for the purpose of collective bargaining by the majority of the employees in a unit appropriate for such pur-*

poses, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievance adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment. (Emphasis added)

"(b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: *Provided*, That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation or (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons

on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

"(c)(1) Wherever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9(a), or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9(a); or

(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9(a);

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an *election* by secret ballot and *shall certify the results thereof.*" (Emphasis added)

STATEMENT OF THE CASE

The "Statement of the Case" in the Petition is laced with irrelevancies, misstatements of fact, expressions of opinion and significant omissions. The controlling facts as viewed by the Respondents are summarized as follows:

The Respondent Riverton and Davison[1] brought an action for damages against the Petitioner under Section 303 of the Labor Management Relations Act, 1947, as amended (29 U.S.C. §187), charging Petitioner with violations of Section 8(b)(4) of the Act. A jury was waived and the case was tried to the court. Findings of fact and conclusions of law were filed on October 8, 1970. (32-89; A-1a-60a)[2] The District Court concluded that the Petitioner had not violated the above section of the Act. However, recognizing the "closeness of the question involved" (75) and the "particularly difficult" nature of the case (82), the Court did determine that the Respondents should recover a total of $150,312.50 plus interest on certain items of damages if the issue of liability was subsequently determined in favor of the Respondents and against the Petitioner. (87-89)

A. The Parties.

Riverton, a West Virginia corporation, engages in interstate commerce in the business of mining coal and loading river barges on the Kanawha River at Crown Hill and Marmet, West Virginia. (32-33) Davison is an Ohio cor-

---

1. Hereinafter Respondent Riverton is sometimes referred to as "Riverton"; Respondent Davison as "Davison" and Petitioner as "UMW."

2. We are employing the record citation system used by the Petitioner and described in footnote 4 on page 5 of the Petition. The abbreviation "A-____a" refers to the Appendix to the Petition for Certiorari. Page references enclosed in parentheses refer to the Joint Appendix or to the Supplemental Appendix filed in the Sixth Circuit and in this Court's Clerk's office.

poration with offices at North Bend, Ohio, engaged in interstate commerce in the business of selling coal. At all material times, Riverton was a wholly owned subsidiary of Davison. Davison acted as exclusive sales agent for all of Riverton's mined and purchased coal. Davison owned coal lands but produced no coal and participated in no collective bargaining negotiations with UMW and executed no UMW contracts. (33)

Petitioner is an unincorporated association and a labor organization with headquarters in Washington, D. C. and a District office in Charleston, West Virginia. It served as exclusive bargaining representative of certain employees employed by Riverton working in its coal mines and on its docks in West Virginia. At all relevant times in its relations with the Respondents, District 17 of the Petitioner was acting as agent for the Petitioner. (33-34) The employees of Respondent Riverton belonged to Local 1209 which was a duly chartered local and subordinate branch of the Petitioner. (34; A-75a)

Effective December 1, 1958, Riverton entered into a collective bargaining agreement with Petitioner, which, by its terms, was,

> "* * * not subject to termination by any party signatory hereto prior to November 30, 1959, PROVIDED, HOWEVER, That either the parties of the first part or the party of the second part may terminate this Agreement on or after November 30, 1959, by giving at least sixty (60) days' written notice to the other party of such desired termination date." (44)

B. Respondent Riverton's History of Purchasing Coal.

The purchasing of coal by one producer from another is an essential marketing practice in the bituminous coal industry. (39) Riverton had contracts with companies in

the utility industry. (731-757; 778-783) Producers entering into such contracts often need to supplement their own production in order to meet delivery schedules. (39; 61-62) For years it had been customary for Riverton to buy coal to supplement its own production in order to fulfill sales contracts and meet market requirements. (35; 107) Although Riverton operated its own mines to full capacity, it was unable to mine enough coal to meet its requirements because of its limited financial resources and lack of mining equipment. (35; 107; 146-147; 203-204)

During the calendar years 1962 and 1963, Davison sold 2,170,000 tons of coal of which 967,354 tons, or 44-1/2%, was coal which had been purchased by Respondents Riverton and Davison from other coal operators. (40; 883; 923) Coal was purchased from mine operators signatory to agreements with the Petitioner, as well as from operators not signatory to any of the Petitioner's agreements. (40; 730-731) During the nine calendar months before April 1964, 78% of the coal purchased by Riverton came from non-UMW signatory mines and 22% came from UMW signatory mines. (40; 693-711) *The base price of coal purchased by Riverton was the same for signatory and non-signatory suppliers.* (40; 116-117) Some suppliers operated mines on lands in which Riverton and Davison had no ownership or tenancy interest. (110; 693-729) Some operated mines on lands owned by Davison and leased to them by Riverton. Others operated mines on lands leased by Riverton from third parties, and in turn, leased to the suppliers. (142; 693-729) Riverton leased coal lands to these suppliers because it could not profitably mine the land or did not possess the necessary mining equipment to remove the coal. (203)

C. The Events of 1963.

During the fall of 1963, the Petitioner, through President Humphreys of its District 17, specifically called to the attention of Riverton the fact that Riverton was doing business with non-union operators operating under leases from Riverton on lands controlled by Riverton. The purpose of this conference was to secure the "help" of Riverton in organizing such non-union operators in exchange for "consent" by the UMW to a business enterprise Riverton was interested in. (50; 125-126) Officials of Riverton did not agree to cooperate with the UMW in this proposal. (126)

Later, in November 1963, Petitioner's District 17 Vice President Neal called Riverton's Executive Vice President to find out what Riverton was doing to force non-signatory operators to become signatories to Petitioner's contract. (126-127) Vice President Davison asked Neal for a list of the operators he was concerned with. (127) Shortly thereafter, Davison received Neal's letter enclosing a list of non-signatory operators that Riverton was to get "signed up as signatory operators." (127-128; 783-784) No claim was made or evidence proffered that any employees of these non-signatories wanted to be represented by the Petitioner. Riverton took no action to induce any of the non-signatory operators to become signatories to a contract with Petitioner. (128)

D. The 1964 Strike and Collective Bargaining Agreement.

Riverton was a member of Kanawha Coal Operators Association. (KCOA) The Association handled Riverton's grievances with the Petitioner. At relevant times, neither Riverton nor KCOA was a member directly or indirectly of the Bituminous Coal Operators Association (BCOA) which negotiates national or regional agreements for its members with the Petitioner. Riverton did not authorize

anyone, KCOA, BCOA or Southern Coal Producers Association (SCPA), either to negotiate for Riverton, or to agree for Riverton in 1964 or 1966. Riverton was not, in either year, a member of any "multiemployer" bargaining group. (36-37) Neither Riverton nor UMW gave the 60-day written notice required by the collective bargaining agreement as a condition to termination of the agreement.

On April 2, 1964, the Petitioner's Field Representative, Emery McCoy, called on Lewis Davison, President of Riverton. McCoy, under the mistaken belief that Riverton had previously signed the Petitioner's 1964 proposed agreement, asked whether other mine companies operating on lands leased from Riverton had signed the agreement. (183-184) Davison answered that Riverton had not signed. McCoy warned that, "There probably will be trouble" when Riverton's employees represented by the Petitioner found out that Riverton had not signed. (183-184) Davison asked McCoy what he meant and McCoy replied, "Well, the men don't like to work without a contract, and there will probably be some trouble of some kind." (184)

For many years, as McCoy and Petitioner's members knew, the Petitioner has had a tradition of "no contract, no work." (53; 421; 424; 427; 438) Although the Petitioner and its representatives knew its members employed by Riverton would not work without a contract and that Riverton's 1958 contract had not been terminated but was still in full force and effect, the Petitioner took no steps to advise its members of these facts. (53-54; 367-368; 287; 392-393; 396-397; 398-400) Instead, when employees of Riverton asked Emery McCoy on April 10 if Riverton had a contract with the Petitioner, he "told them that they didn't have one" despite the fact that there was such a contract in existence. (54-55; 420) The District Judge explicitly found "as an ultimate finding of fact" that this

> "action of the District Representatives, in its context, was the equivalent of a 'signal' to 'strike' and was so intended by the District Representatives and the men. The Union instructed its members to strike, not by direct viva voce but in 'union lingo'—as well understood by all concerned as is the Blackwood referred to now, by some, as 'Back-woods' convention by a bridge player." (54)

In response to McCoy's "signal", a strike of Riverton's employees commenced on April 10. On the evening of April 10, 1964, Arby McCoy, Financial Secretary-Treasurer and Chairman of the Mining Committee of Petitioner's Local Union 1209 at Riverton (423) and Edward Perry, a member of the Mining Committee, both of whom were employees of Respondent Riverton, (426) began stopping trucks entering the Riverton tipple at Crown Hill, West Virginia. (184-186; 426-427) The work stoppage continued until the evening of April 15, 1964. (50)

Lewis Davison talked to Arby McCoy and Perry as they were stopping the trucks. (193-194) Davison asked McCoy what he and the other men with him were doing and McCoy replied, "Well, the men don't want to work without a contract." (193) When Davison responded that "the Union has never served 60-day notice", McCoy retorted, "Well, the men won't work without a contract, that is it." (193) The District Judge expressly found that:

> "The union employees of Riverton did, in fact and law, have a binding contract extending to April 15, 1964, at least, i.e., the 1958 contract negotiated by the employees' bargaining agent." (50)

The District Court found that:

> "An object of the April, 1964, strike at Riverton was to force or require Riverton to enter into the proposed

1964 printed form amendment to the National Bituminous Coal Wage Agreement of 1950." (55)

On April 13, Lewis Davison went to the Petitioner's District headquarters in Charleston, West Virginia, and asked District President Humphreys for a copy of the Petitioner's 1964 proposal which the Petitioner wanted Riverton to sign. (187) Humphreys gave Davison a printed document entitled "National Bituminous Coal Wage Agreement of 1950 as Amended Effective April 2, 1964." (187-188) Davison asked Humphreys, "Well, what is it going to take to get the men back to work." (187) Humphreys answered, "Sign the contract." (187) Davison declined to sign at that time. (187)

On April 13, Riverton wired W. A. Boyle, the Petitioner's President, and Raymond Humphreys, stating:

> "To settle this illegal strike we are willing to sign this Agreement and put the wage increase into effect if you will eliminate two sections entitled 'United Mine Workers of America Welfare and Retirement Fund of 1950' and 'Application of Contract to Coal Lands.' We are advised that these two clauses are illegal. Are you willing to omit them or suggest modifications which will be legal? We are willing to continue the welfare and retirement fund provisions of our current contract with your union for the duration of the new Agreement paying 40¢ per ton due to the fund as in the past on each ton of bituminous coal produced by us for use or sale." (A-21a-22a)

On the following day, R. O. Lewis, Petitioner's Vice President, telegraphed Riverton from Washington, D. C. declining Riverton's proposal to omit or modify the two sections of the agreement in question and claiming that the work stoppage was a "voluntary protest of your employees against your failure to execute the new Agreement."

(810) The provisions of the proposed agreement referred to in Riverton's telegram of April 13 were the two provisions at issue in this case, commonly referred to as the "80-cent penalty clause" and the "coal lands clause." (52-53) In relevant part, the 80-cent penalty clause read:

> "UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND OF 1950
>
> "* * * During the life of this agreement there shall be paid into such Fund by *each Operator signatory hereto* the sum of *forty cents (40¢) per ton* of two thousand (2,000) pounds on each ton of bituminous coal *produced by such Operator* for use or for sale. On all bituminous coal procured or acquired by any signatory Operator for use or for sale (i.e., all bituminous coal other than that produced by such signatory Operator), there shall, during the life of this Agreement, be paid into such Fund by each such *Operator signatory* hereto or by any subsidiary or *affiliate* of such Operator signatory hereto the sum of *eighty cents (80¢) per ton* of two thousand (2,000) pounds on each ton of such bituminous coal so *procured or acquired on which the aforesaid sum of forty cents (40¢) per ton had not been paid* into said Fund *prior to such procurement* or acquisition." (606-07; emphasis added)

In relevant part, the coal lands clause read:

> "APPLICATION OF CONTRACT TO COAL LANDS
>
> "As part of the consideration of this agreement, the Operators signatory hereto agree that *this Agreement covers the operation of all the coal lands, coal producing and coal preparation facilities owned or held under lease by them*, or any of them, *or by any* subsidiary or *affiliate* at the date of this Agreement, or acquired dur-

ing its terms which may hereafter (during the term of this Agreement) be put into production or use * * *." (608; emphasis added)

On April 15, following receipt of the telegram from R. O. Lewis, Riverton notified the Petitioner that in order to end the strike it would sign the Petitioner's 1964 contract and asked the Petitioner to send Emery McCoy to Riverton's office with copies for signature. (188) That afternoon, McCoy and several members of the Local 1209 Mining Committee came to Riverton's office at Crown Hill, West Virginia, and presented the contract for signing. (188-189) Lewis Davison signed the contract (605-609), stating that he was doing so "under protest, under coercion because of illegal strike", whereupon McCoy turned to the Committee and said, "Get the men back to work on the evening shift." (188) The employees then promptly returned to work and the strike ended. (188) The agreement Lewis Davison signed was entitled the "National Bituminous Coal Wage Agreement of 1950 as Amended Effective April 2, 1964" and contained the two clauses in question in this case. (52-53; 606-608)

E. The 1966 Strike and Collective Bargaining Agreement.

The 1964 agreement was to continue in effect until March 31, 1966 and was subject to termination on or after that date by either party giving sixty days' written notice of termination. (56) Neither party gave a termination notice. (56) Despite this, on April 12, 1966, and continuing until April 27, 1966, employees of Riverton represented by the Petitioner engaged in another strike. (56-57) In order to end the strike, the Petitioner forced Riverton to sign a new printed form agreement entitled "National Bituminous Coal Wage Agreement of 1950 as Amended Effective April 1, 1966" despite the fact that the 1964 agree-

ment was still in effect. The strike ended as soon as Riverton agreed to sign under protest. (56) The District Judge found that:

> "* * * *prior to execution the defendant Union was informed in writing that the provision of the printed form entitled 'United Mine Workers of America Welfare and Retirement Fund of 1950' was unlawful and that Riverton was signing 'under protest.'*" (56; emphasis added)

The Court found that the 1966 agreement "carried forward and preserved the terms and conditions of the said previous agreements, including the 40-80 cent welfare clauses * * *" and also carried forward the coal lands clause in such agreement. (56-57) Disregarding the presumption of continuing status and the protests of Riverton, the District Court concluded that, "The object of the 1966 strike was not related to the 40-80 cent clause" (58) and that, "There is certainly no connection whatever between the 80-cent clause in either the 1964 or 1966 contract and the 1966 strike." (86) The Court of Appeals reversed such conclusions, observing that "UMW benefited by the strike and took advantage of that fact to get a new contract." (A-74a) The District Court observed that "Riverton signed under express protest to the 80-cent clause based on the claimed illegality thereof". The Court also found that:

> "The defendant took no affirmative action, other than above described, to end the strike, but, as noted above, it did not ratify by such inaction—nor did it encourage as in the case of the strike at Riverton in 1964." (58)

This finding by the District Judge was set aside by the Court of Appeals as authorized in Rule 52(a) of the Federal Rules of Civil Procedure, the Court stating:

> "The findings of fact by the District Court that UMW did not induce or encourage the 1966 strike, and did

not thereby violate the Act, are not supported by evidence and are *clearly erroneous.*" (A-75a; emphasis added)

UMW witness Emery McCoy, a representative of the Petitioner, admitted that he attended a meeting of Riverton Local 1209 on April 16, 1966 at which "they voted not to work." (410) Again, as in 1964, McCoy failed to tell the men that Riverton already had a contract in existence. (412) The District Judge found that Local 1209 was a "subordinate branch of the defendant Union" (34) and that "The District took no steps to penalize Riverton's striking employees." (59)

F. The Impact of the 80-Cent Penalty and Coal Land Clauses.

Following execution by Riverton of the 1964 agreement with the Petitioner and continuing thereafter through the 1966 agreement, Riverton bought no more coal from non-signatory suppliers. (55; 59) The District Court found:

> "This was because, under the new agreement, the terms of the agreement were applicable to all suppliers of Riverton or Davison and a Welfare Fund payment of 80 cents a ton was required to be paid on all coal bought from non-signatories." (55)

The President of Riverton informed all suppliers that:

> "* * * because we had signed this 1964 agreement * * * that they would have to become signatory to the contract and furnish me with a letter saying they were a signator before I could buy any more coal from them." (194)

Thereafter, as some suppliers signed up, the UMW informed Riverton of this fact so Riverton could resume pur-

chasing their coal. (194-195; 664-691) The same procedure was used after Riverton executed the 1966 agreement with the UMW under protest. (197; 679-691)

Many suppliers did not become signatory to the Petitioner's contract and thus were precluded from selling coal to Riverton. (731) Riverton could not make up its loss of the purchases from non-signatory suppliers. (55-56) All of its mines continued to operate at full capacity, but Riverton could not acquire enough UMW signatory coal to supplement its own production within a range of economic delivery at a price it could pay and realize a profit. (55-56; 169; 146-147)

During 1962-1963 Riverton's coal purchases from other suppliers averaged 40,000 tons a month. (61) In March, 1964, the last month before the 80-cent penalty clause and coal lands clause became effective, purchases by Riverton were 41,568 tons. (61) In the first month after the clauses became effective, purchases dropped to 26,119 tons. (61) During the remainder of the calendar year of 1964, they averaged 24,930 tons a month. (61) In the calendar year 1965 tonnage purchased averaged less than 23,000 tons a month, and in 1966 the average was 21,194 tons and in 1967 was 26,800 tons a month. (61) The District Court found that:

> "The reduction in purchases of supplemental coal by Riverton after April, 1964, were a consequence of the coal lands clause and the 80-cent penalty provision included in the 1964 agreement which Riverton signed as a result of the strike action of April 10-15, and in the 1966 agreement." (61)

The lower court found that:

> "After Riverton signed the 80-cent clause, and as a result thereof, some fifteen non-union producers from

which Riverton had been buying supplemental coal became signatories to the UMW agreement." (55)

It was necessary for the suppliers to become signatory to the Petitioner's agreement in order to lift the 80-cent penalty on their coal. (82) Under Section 302(c)(5) of the Labor Management Relations Act, 1947, as amended (29 U.S.C. §186(c)(5) only employers who are *signatory* to an agreement with the Petitioner may make contributions to the United Mine Workers Welfare and Retirement Fund of 1950. (43-44; 82) It was thus impossible for non-signatory operators to pay the normal 40-cent per ton welfare payment without becoming a party to all the provisions of the Petitioner's contract. (82) The employees of Riverton's suppliers who were thus forced to sign a contract with the Petitioner had never designated the Petitioner as their collective bargaining representative, and the Petitioner had never been certified as the representative of such employees after a secret ballot election conducted by the National Labor Relations Board under the provisions of Section 9 of the Labor Management Relations Act, 1947, as amended, (29 U.S.C. §159) (55), as required to validate boycott action under 8(b)(4)(B). (29 U.S.C. §158(b)(4)(B).

The 80-cent penalty and coal lands clauses of the 1964 and 1966 agreements with the Petitioner made Riverton responsible for the payment of an 80-cent per ton penalty to the Petitioner's Welfare Fund on all coal purchased by Davison from non-signatory operators. (62) Before the execution of the 1964 agreement by Riverton, Davison had entered into a written agreement with the Ford Coal Company on January 30, 1964. (62) Under this agreement, Davison agreed to buy 1,000 tons of coal per day from Ford for a period of two years at a specified price. (62) After Riverton entered into the 1964 agreement with Petitioner,

Davison notified Ford it could no longer purchase coal unless Ford became a UMW signatory operator. (62) Ford refused and Davison, in violation of the provisions of its contract with Ford and in an effort to comply with the provisions of the agreement which had been entered into by Riverton with the Petitioner, declined to purchase further coal from Ford. (62) The District Court found, "The breach and refusal were caused by the 80-cent clause in the 1964 union contract." (63) Ford sued Davison and the suit was settled for $15,000. (63)

G. The Decision of the District Court.

The District Court concluded that the Petitioner "in 1964 induced and encouraged individuals employed by [Riverton] to engage in a strike" and "also threatened, coerced and restrained [Riverton] as those words are used in 8(b)(4)(A) and (B)" and that:

> "An object, and by far the primary object, of such conduct was to force and require Riverton to enter into the 1964 agreement containing the 80-cent clause * * *." (84)

The District Court also found that:

> "another object of the said strike was to force or require Riverton and Davison to cease using, selling, handling, transporting or otherwise dealing in the products of coal producers who were not signatories to an agreement with the defendant Union and to cease doing business with such producers." (55)

The Court said that:

> "* * * in other words, the strike-force coercion threat was directly and primarily related to the 80-cent clause. A proximate result of the 80-cent clause to

Riverton was to force it to cease dealing in the products of other producers of coal, i.e., producers who were not unionized." (84-85)

The Court also concluded that:

"Another proximate result was the forcing of some then non-union producers to unionize and in that sense a proximate result of the clause was bargaining by the Union as the representative of employees it did not represent as a matter of certification." (84-85)

The Court also concluded that:

"With respect to the 1966 strike, there is no evidence in this case based on which this Court could say that the plaintiff has maintained the burden of proving by a preponderance that District 17, or the defendant, either authorized or ratified the 1966 strike at Riverton." (86)

The Court further concluded that the facts summarized above did not establish a violation of the Act because,

"The primary, and clearly primary, purpose of [the 80-cent clause] was to tackle in a successful way a legitimate problem of subcontracting and work preservation which had existed for decades and had been attacked for decades in unsuccessful contractual methods." (83)

The Court said that:

"A secondary effect of each of these clauses was the protection of the Welfare Fund—clearly a legitimate primary (in a labor sense) target. A secondary effect of each of these clauses was the unionization of some non-union employers. It was foreseeable and in that sense was a purpose at the time the clauses were negotiated." (83-84)

After referring to "the closeness of the question involved here" (75), the Court proceeded to make findings on the damage issue "so that if there be a reversal on liability, the facts which raise the question for decision will be before the reviewing court." (87) The Court then concluded that "if the issue of liability should have been determined in favor of the plaintiff and against the defendant, the plaintiff should recover" damages in the total amount of $150,312.50 with interest and costs. (87-89)

H. The Decision of the Court of Appeals.

The Court of Appeals reversed the Trial Judge on the merits and directed entry of judgment for the Respondents in the amount found appropriate by the Trial Judge. The Court concurred with the Trial Judge that the Petitioner had induced and encouraged the 1964 strike and had threatened and coerced Riverton, forcing Riverton to agree to the 1964 agreement containing the 80-cent clause. The Court reversed the findings of the Trial Judge with respect to the 1966 strike, holding that the District Court's findings that the Union did not induce or encourage such strike "are not supported by evidence and are clearly erroneous." The Court noted the District Court's specific findings

> "* * * that 'an object' of the 1964 strike was to force Riverton to sign the agreement containing the eighty cent penalty clause. Another object was to compel Riverton and Davison to cease doing business with, and to cease using the products of, other coal producers who were non-signatories. The foreseeable purpose of the eighty cent clause was 'the unionization of some non-union employers.'" (A-70a)

The Court then noted that:

> "It is clear that Section 8(b)(4) of the Act forbids strike action if 'an object' is to force an employer

to do any of the things prohibited by Section 8(e). The statute does not mention primary object or purpose. If any object of the strike is forbidden by Section 8(b)(4), it is a secondary boycott. It is not necessary to find that it was the sole object. *NLRB* v. *Denver Bldg. & Const. Trades Council*, 341 U.S. 675 (1951)." (A-70a)

The Court accepted the finding and conclusion of the District Judge that "Riverton and its parent corporation Davison are proper parties to bring the action", and while indicating its belief "that a much larger award" could be sustained, accepted the District Court's determination of the amount of damages, stating that "the award was within the range of the evidence and we are not inclined to disturb it." (A-77a-78a)

SUMMARY OF ARGUMENT

This case presents no novel legal questions but instead involves the routine application of established statutory construction and principles of law.

Riverton operates coal mines in West Virginia and is a wholly owned subsidiary of Davison. Davison owns lands mined by Riverton, participates in the handling of coal mined by Riverton and certain of Riverton's suppliers, and receives a commission for handling and selling such coal. Riverton mined as much coal as it could with its existing equipment and financing. For many years it had been customary for Riverton to supplement its needs with coal purchased from other mines. Most, but not all, of these mines were non-union. Riverton paid the same price for coal purchased from non-union and union suppliers. In 1964, the UMW threatened Riverton with strike action and later induced and encouraged a strike against Riverton in breach of contract for the purpose of forcing Riverton to terminate its existing labor agreement and substitute a new

agreement containing so-called "80-cent penalty" and "coal lands" clauses. Under these clauses, Riverton could no longer buy coal from non-union mines without paying an 80-cent a ton penalty to the UMW pension fund. The clauses were also binding on Davison as an "affiliate" of Riverton. An object and effect of the clauses was to make Riverton stop doing business with non-union mines and handle only the products of mines which were signatories to a UMW agreement.

In 1966, the UMW again induced and encouraged strike action against Riverton in breach of contract in order to compel Riverton to execute a new collective bargaining agreement which also contained the above clauses. In both 1964 and 1966, Riverton yielded to the UMW strike pressure and accepted the 80-cent penalty clause and the coal lands clause "under protest."

Riverton and Davison sued the UMW under Section 303 of the Act for damages resulting from the UMW strike action and the restrictions contained in the 1964 and 1966 agreements, alleging that the UMW's actions violated Section 8(b)(4)(A) (B) and 8(e) of the Act.

After hearing the case without a jury, the trial judge both found and concluded that Riverton and Davison were proper parties plaintiff, that the UMW had engaged in coercive action against Riverton; also, that the UMW coercion had secondary objects; that one of these secondary objects was to force Riverton to sign an agreement containing the above clauses whereby Riverton and Davison were forced to stop doing business with non-union mines; also that "unionization of some non-union employers" was "foreseeable and in that sense was a purpose at the time the clauses were negotiated"; also, that "another effect" of the strike was "to encourage coal producers selling coal to Riverton or Davison to recognize or bargain with UMW

even though UMW had not been certified as the representative of" the employees of such producers.

The District Court also found, however, that "the primary purpose for exacting the 80-cent clause bargain" was "to prevent subcontracting, preserve Riverton's employees' work, maintain union standards in the production of coal" and to "protect the integrity of the Welfare Fund." Because the District Judge concluded this was the "primary" purpose of the UMW coercion against Riverton, he entered judgment for the UMW despite the finding of other objectives specifically forbidden by the language of Section 8(b)(4). Because he considered the question a close one, the District Judge proceeded to find the amount of money damages to which Riverton and Davison would be entitled if judgment should have been entered for them. The amount of damages was $150,312.50 with interest and costs.

The Court of Appeals for the Sixth Circuit reversed the District Court's judgment of dismissal and directed the entry of judgment for Riverton and Davison in the amount of $150,312.50 with interest and costs. Citing the decision of this Court in *NLRB* v. *Denver Building and Construction Trades Council*, the Court of Appeals stated:

> "It is clear that Section 8(b)(4) of the Act forbids strike action if 'an object' is to force an employer to do any of the things prohibited by Section 8(e). The statute does not mention primary object or purpose. If any object of the strike is forbidden by Section 8(b)(4), it is a secondary boycott. It is not necessary to find that it was the sole object."

The decision of the Court of Appeals does not conflict with applicable decisions of this Court. Also, there is no direct conflict between the Circuits on the question presented.

As this case meets none of the accepted standards for granting certiorari, it should be denied.

REASONS FOR DENYING THE WRIT

1. On the Facts Found by the District Court, Riverton and Davison Were Entitled to Judgment As a Matter of Law.

a. The UMW coerced Riverton and Davison.

The facts and findings of the District Court with respect to the actions of the UMW in 1964 are summarized in Section D of the *Statement of the Case, supra.* Riverton bargained for itself, and not as a member of any multi-employer bargaining group. (36-37) On April 2, 1964, the UMW Field Representative, Emery McCoy, threatened Riverton that, "There probably will be trouble" when Riverton's employees represented by the UMW learned that Riverton had not yet signed the new agreement negotiated by the UMW with the Bituminous Coal Operators Association, containing the 80-cent penalty and coal lands clauses. (183-184) Riverton's President asked McCoy what he meant and McCoy answered, "Well, the men don't like to work without a contract, and there will probably be some trouble of some kind." (184) These threats by McCoy were binding on the UMW. (34; Act, Section 301(e) and 303(b)) In view of their objects, hereinafter discussed, the threats in themselves constituted a violation of Section 8(b)(4)(ii)(A) and (B), as the District Court found. (84, par. 4)

The Union members had a practice of not working without a contract. (193; 421; 424; 427; 438) At the Union meeting on April 10, at which the strike was voted, Riverton employees asked UMW representative, Emery McCoy, if Riverton had a contract with the Union. McCoy "told them they didn't have one" although he knew such a contract was in existence. (54-55; 420) The strike followed. The District Judge found that this misrepresentation by

McCoy "in its context, was the equivalent of a 'signal' to 'strike' and was so intended by the District Representatives and the men."[3] He found that this "signal" was "in 'union lingo' " and was "well understood by all concerned." (54)

In addition to the activities of UMW District Representative, Emery McCoy, referred to above, the Financial Secretary-Treasurer and Chairman of the Mining Committee of UMW Local 1209, whose name was Arby McCoy, in company with Edward Perry, a member of the Local Mining Committee, began stopping trucks on April 10. (184-186; 426-427) A Riverton official asked them what they were doing, and Arby McCoy answered, "Well, the men don't want to work without a contract." (193) When reminded that there was a contract in existence, McCoy merely retorted, "Well, the men won't work without a contract, that is it." (193)

When Riverton official, Lewis Davison, asked the UMW District President Humphreys on April 13, "Well, what is it going to take to get the men back to work?", Humphreys answered succinctly, "Sign the contract." (187-188) The contract referred to was a printed document handed by Humphreys to Davison entitled "National Bituminous Coal Wage Agreement of 1950 as Amended Effective April 2, 1964" and contained the 80-cent penalty clause and the coal lands clause which are the subjects of this litigation. (187-188)

---

3. The statement on page 22 of the Petition herein that "the district court, finding 'Something affirmative is required before a conclusion of "union authorization" is justified', found such requirement in the 1958 Agreement's 'integrity' provision and *not 'the quasi-affirmative expression of District 17 on April 10, 1964, that there was no contract between Riverton and the Riverton workers'* declaring, 'There was' " is clearly erroneous. The District Judge specifically stated that he found the "Something affirmative" not only in the "1958 agreement's 'integrity' provision" *but also "in the quasi-affirmative expression of District 17 on April 10, 1964 that there was no contract between Riverton and the Riverton workers. There was."* (54-55; emphasis added)

On April 13, when Riverton wired W. A. (Tony) Boyle, the UMW President, that Riverton would sign the proposed agreement if the 80-cent clause and the coal lands clause were deleted, the UMW refused. (808-810)

As soon as Lewis Davison signed the contract "under protest, under coercion because of illegal strike", Emery McCoy turned to the Committee and said, "Get the men back to work on the evening shift." The employees promptly returned to work. (188; 605-609)

It was admitted at the pre-trial conference and affirmed at the trial that District 17 was an agent of the UMW for the purposes of this case. (34; 583-4; 592; 354-7) It is clear, therefore, that District 17's officers and representatives, including R. R. Humphreys and Emery McCoy, were acting as agents of the UMW in 1964 and that UMW is responsible for their actions.[4]

This Court has held that the words "induce and encourage" in 8(b)(4) are "broad enough to include in them *every form of influence and persuasion.*" *IBEW* v. *NLRB* (1957) 341 U.S. 694, 701-02 (emphasis added)

On the basis of the substantial evidence summarized above, directly linking the UMW through its authorized agents with the 1964 strike, the District Judge properly found and concluded that:

> "The defendant in 1964 induced and encouraged individuals employed by the plaintiff to engage in a strike and a refusal to perform services for Riverton in the course of their employment and also threatened,

---

4. For the relationship between UMW and its districts, see: *UMW* v. *Patton* (CA 4, 1954) 211 F. 2d 742, cert. den. (1954) 348 U.S. 824; *UMW* v. *Osborne Mining Co.* (CA 6, 1960) 279 F. 2d 716, cert. den. (1960) 364 U.S. 881; *Riverside Coal Co.* v. *UMW* (CA 6, 1969) 410 F. 2d 267, cert. den. (1969) 396 U.S. 846; *White Oak Coal Co.* v. *UMW* (CA 6, 1963) 318 F. 2d 591, cert. den. 379 U.S. 871 (1964).

coerced and restrained Riverton, as those words are used in 8(b)(4) (A) and (B)." (84, paragraph 4)

The Court of Appeals accepted and adopted these findings and this conclusion of the District Court in directing judgment for Riverton and Davison. (A-72a-73a)

The District Court found that, "During the term of the said 1964 agreement, Riverton was shut down again by a strike which began on April 12, 1966." (56) The Court also found that the 1964 contract "was in effect a no-strike contract", so the 1966 strike like that in 1964 was in breach of contract and also violated Section 8(d) of the Act. (59-60)

The District Court said, "With respect to the 1966 strike, there is no evidence in this case based on which this Court could say that the plaintiff has maintained the burden of proving by a preponderance that District 17, or the defendant, either authorized or ratified the 1966 strike at Riverton" (86, paragraph 6) and that the stoppage was not "concerned with the 80-cent clause or the Land Lease clause" although these were in the new contract which the UMW forced Riverton to sign as a condition of ending the 1966 strike. (57-58) As in 1964, Riverton "signed under express protest to the 80-cent clause based on the claimed illegality thereof." (56)

District 17 of the UMW asked the members of its Local 1209 to return to work but they did not do so until after the new agreement with the 80-cent clause was signed. (57-58) It was found that, "The defendant took no affirmative action, other than above described, to end the strike." (58) The District Court concluded, however, that this inaction did not constitute ratification or encouragement of the strike. The Court of Appeals explicitly rejected these findings of non-inducement or encouragement and stated

that they were "not supported by evidence and are clearly erroneous." (A-75a) The Court said that:

> "* * * UMW, having the power to correct the unlawful action of the Local union, and deciding to accept the benefit of it instead of taking appropriate action to halt the strike as it was required to do under the contract, thereby induced and encouraged both the 1964 and the 1966 strike." (A-75a)

It was pointed out that the 1966 contract "contained the illegal eighty-cent penalty clause" and that:

> "The only way Riverton could terminate the strike was to sign the 1966 amendment to the national contract, which it did under protest." (A-74a)

These conclusions of the Court of Appeals are clearly supported by the above findings and the findings of the District Court that "District 17's president had personal knowledge of" the 1966 strike at Riverton "and could have filed charges" against striking UMW members, but "took no affirmative action" other than a telegram calling them to return to work. (57-59) Also, Emery McCoy admitted that the Union never told the men that "Riverton already had a contract in existence" (412), although he attended the Local Union meeting at which a strike vote was taken. (410) The decision of the Court of Appeals on this point is consistent with that of the Fifth Circuit in *Vulcan Materials Co.* v. *Steelworkers* (CA 5, 1970) 430 F. 2d 446, in which that court likewise found inducement and encouragement by failure to take positive action. The Court there observed that:

> "Even though he [the International representative] may have advised Vulcan employees to return to work, he never took action which could reasonably have been expected to effectuate this end and thus

> can be said to have, at the very least, acquiesced in and condoned the illegal activity." (430 F. 2d at 457)

Accord: *Teamsters* v. *Humko* (CA 6, 1961) 287 F. 2d 231, cert. den. (1961) 366 U.S. 962.

The UMW was also responsible for the 1966 strike because of its control over and domination of its Locals, which have no real autonomy. (640-664; 436-444)

The 1966 strike is of minor importance in the case. The trial court, as stated above, concluded that the 1964 strike was Union authorized (85), that "the strike-force coercion threat was directly and primarily related to the 80-cent clause" and that:

> "A proximate result of the 80-cent clause to Riverton was to force it to cease dealing in the products of other producers of coal, i.e., producers who were not unionized." (84-85)

The Court held that the 1966 strike had nothing to do with the 80-cent clause (86) but that as a result of the initial insertion of the clause into the contract through coercive measures in 1964, if the clause is considered invalid the Respondents are entitled to recover damages for the entire period from April 1964 until September 1968. (86-87) Accordingly, all but $38,128.50 of the total damages found by the trial court to be appropriate were attributed to the 1964 strike. (88, subparagraph d; 86-87)

b. The UMW coercion had secondary objects.

The trial court dismissed the suit because it concluded that the "primary purpose" of the clauses "was work preservation." (84) The court said "the primary purpose for exacting the 80-cent clause bargain" was "to prevent subcontracting, preserve Riverton's employees' work, maintain union standards in the production of coal which could

just as well have been produced by Riverton and protect the integrity of the Welfare Fund." (85) Inconsistently, the District Court also found that, "The purchasing of coal by one producer from another is an essential marketing practice in the bituminous coal industry" and that, "It was customary for Riverton to buy supplemental coal in order to fulfill its contracts with buyers of coal." (40; also see paragraphs 10, 35) He found that Riverton had been purchasing about 40,000 tons a month (61), and that this coal was purchased because,

> "* * * Riverton 'could not financially put in any more coal mines.' Riverton's projected costs would have exceeded what it cost to acquire added coal through contracts with small operators, some union and some not, and some operating under subleases on land controlled by Riverton." (35, paragraph 9)

The District Judge further found that after the 1964 agreement was signed and Riverton ceased its purchases of coal from nonsignatories,

> "* * * Riverton was unable to make up its loss of volume of coal by purchase from other sources. Supplemental coal could not be acquired within a range of economic delivery at a price which Riverton could pay and realize a profit." (55-56, paragraph 40)

The District Court's obviously contradictory findings with respect to the "primary purpose" of the 1964 strike and the 80-cent and coal lands clauses have no material significance in view of his findings that in addition to the above-mentioned "primary" purpose, *the Union had certain other specific secondary objectives.* He found as a fact that "unionization of some non-union employers" was "foreseeable and in that sense was *a purpose* at the

time the clauses were negotiated." (84, paragraph 3, emphasis added) He also found that:

> "*Another object* of the said strike was to force or require Riverton and Davison to *cease using*, selling, handling, transporting or otherwise dealing in the products of coal producers who were not signatories to an agreement with the defendant Union and to *cease doing business* with such producers." (55, paragraph 39; emphasis added)

The District Judge also found that:

> "Another effect of the said strike was to encourage coal producers selling coal to Riverton or Davison to recognize or bargain with the defendant Union as the representative of the employees of such producers even though the defendant Union had not been certified as the representative of such employees under the provisions of Section 9 of the Act." (55, paragraph 39)

In addition, the District Judge specifically found that:

> "An object of the April, 1964, strike at Riverton was to force or require Riverton to enter into the proposed 1964 printed form amendment to the National Bituminous Coal Wage Agreement of 1950." (55, paragraph 39)

He found that:

> "A proximate result of the 80-cent clause [in the agreement] to Riverton was to *force it to cease dealing in the products* of other producers of coal, i.e., *producers who were not unionized.*" (84-85, paragraph 4; emphasis added)

The Court of Appeals relied upon the above findings of the District Judge in reversing and directing the entry

of judgment for the Respondents. (A-67a)[5] The Court of Appeals said:

> "* * * the District Court specifically found that 'an object' of the 1964 strike was to force Riverton to sign the agreement containing the eighty cent penalty clause. Another object was to compel Riverton and Davison to cease doing business with, and to cease using the products of, other coal producers who were nonsignatories. The foreseeable purpose of the eighty cent clause was 'the unionization of some non-union employers.'
>
> "It is clear that Section 8(b)(4) of the Act forbids strike action if 'an object' is to force an employer to do any of the things prohibited by Section 8(e). The statute does not mention primary object or purpose. If any object of the strike is forbidden by Section 8(b)(4), it is a secondary boycott. It is not necessary to find that it was the sole object." (A-70a)

The Court of Appeals also correctly concluded, on the basis of the above findings of the District Court, that:

> "* * * the supplemental coal which Riverton and Davison were purchasing from signatory and nonsignatory suppliers involved work which was never performed by their own employees. Riverton was operating at all times at full capacity, but because of lack of working capital and of mining equipment, it could not run additional mines, and it was necessary for Riverton to purchase coal to fill its orders." (A-71a)

---

5. As the Court of Appeals relied on the findings of fact of the trial court, there was no violation of Rule 52. The only reversal of a trial court finding was with respect to union responsibility for the 1966 strike and there the Court of Appeals specifically found that the finding was "clearly erroneous" as provided in Rule 52(a). (A-75a)

The secondary objects quoted above which the District Judge found to exist are clearly forbidden objects under the wording of Section 8(b)(4) and required the Court of Appeals to reverse and direct entry of judgment for the Respondents. In drafting Section 8(b)(4), Congress expressly provided that a violation occurred whenever "*an* object" is one of the purposes listed in subparagraphs (A) through (D) of Section 8(b)(4). This Court has construed the phrase "an object" as meaning *any* object. In *NLRB* v. *Denver Building Trades Council* (1951) 341 U.S. 675, this Court, in applying Section 8(b)(4) and finding a violation thereof said:

> "It was *an* object of the strike to force the contractor to terminate Gould & Preisner's subcontract.
>
> "We hold also that a strike with *such an object* was an unfair labor practice within the meaning of §8(b)(4)(A).
>
> "*It is not necessary to find that the sole object of the strike was that of forcing the contractor to terminate the subcontractor's contract. This is emphasized in the legislative history of the section.*" (341 U.S. at 689; emphasis added)

Subsequently, in *NLRB* v. *Local* 825 *Operating Engineers* (1971) 400 U.S. 297, 27 L.Ed. 2d 398, this Court reaffirmed its support of the *Denver Building Trades* decision, observing that Local 825 was:

> "* * * using a sort of pressure that was unmistakably and flagrantly secondary. [Citing *Denver Building Trades Council*, supra]
>
> "The more difficult task is to determine whether *one* of Local 825's objectives was to force Burns and the other neutrals to 'cease doing business' with White

as §8 (b)(4)(B) *requires*." (400 U.S. at 304; emphasis added)

The Circuits likewise have followed the "an object" construction. In *NLRB* v. *Milk Wagon Drivers Local No. 753* (CA 7, 1964) 335 F. 2d 326, the court said:

> "It is well settled that one unlawful object is sufficient for a finding that §8(b)(4) has been violated, although there might be other lawful objects." (At 326)

Also, in *Retail Clerks Local 770* v. *NLRB* (CA D.C., 1961) 296 F. 2d 368, the court observed that:

> "* * * a strike may have several 'objects.' The term used in the statute is *an* object." (At 373; emphasis in original)

See also *NLRB* v. *New York Lithographers* (CA 3, 1967) 385 F. 2d 551.

Besides violating 8(b)(4)(B), the UMW, on the basis of the findings of the District Court, also violated Section 8(b)(4)(A). As stated, *supra*, the District Judge specifically found that "an object" of the UMW coercion was to force Riverton to sign an agreement containing the 80-cent and coal lands clauses. (55, paragraph 39) Section 8(b)(4)(A) makes it unlawful for a union to coerce an employer "to enter into any agreement which is prohibited by Section 8(e)." Section 8(e) forbids an agreement "*whereby* such employer ceases or refrains or agrees to cease or refrain from * * * dealing in any of the products of any other employer." (Emphasis added) The District Judge found that:

> "A proximate result of the 80-cent clause to Riverton was to force it to cease dealing in the products of other producers of coal, i.e., producers who were not unionized." (84-85)

Thus, the clauses in question were clauses "whereby" Riverton was forced to cease dealing in certain products and clearly violated 8(e), so that the coercion to obtain the clauses became a violation of 8(b)(4)(A).

c. Davison is a proper party.

The trial court found and concluded that:

> "Davison is an 'affiliate' of Riverton and as such is includible within the meaning of the word 'whoever' in 29 U.S.C. §187." (71)

The Court of Appeals concurred in this conclusion, stating:

> "In our opinion, Riverton and its parent corporation Davison are proper parties to bring the action." (A-78a)

The coal lands clause states that "this Agreement covers the operation of all the coal lands, coal producing and coal preparation facilities owned * * * by any * * * affiliate * * *." (608) The undisputed facts show that Riverton was Davison's wholly owned subsidiary, and that Davison owned coal lands and coal preparation facilities which it leased to Riverton. (102-103) In addition, Davison acted as Riverton's exclusive sales agent for all mined and purchased coal and received a sales commission of from 6% to 8%. (103) Some coal lands leased by Riverton from Davison were in turn leased by Riverton to non-signatory operators from whom Riverton purchased coal. (142; 693-729) In addition, Davison owned coal lands used by its subsidiary, Riverton. Davison also owned and operated the North Bend dock and coal preparation facility through which Riverton's coal was shipped. (104; 170-171; 312) The above undisputed facts amply justify the conclusion of both courts below that Davison was in fact an

"affiliate" of Riverton in Riverton's coal mining enterprises.

The 80-cent clause forced on Riverton by UMW coercion requires the payment of the 80-cent penalty "by each such Operator signatory hereto or by any subsidiary or *affiliate* of such Operator signatory hereto." (606-07; emphasis added) The coal lands clause asserted that "this Agreement covers the operation of all of the coal lands, coal producing and coal preparation facilities owned * * * by any * * * *affiliate* * * *." (608; emphasis added) The trial court correctly found, therefore, that the 80-cent penalty clause and the companion coal lands clause, "By their terms * * * made Riverton responsible for the payment of an 80-cent per ton penalty to the United Mine Workers fund on all coal purchased by Davison from non-signatories." (62)

As soon as the agreement was signed by Riverton, Davison's lands were automatically impressed with the burden of the 80-cent penalty. This would necessarily have a direct impact on Davison's sales commissions and on the value of its coal lands and coal preparation facilities leased to Riverton. Indeed, it was solely because of this impact of the 80-cent clause that Davison was compelled to stop performance on its contract with Ford Coal Company. (62-63; 87) A part of the damage award is attributable to this incident. (87, par. 8(a))

It is not easy to understand why the UMW has raised the Davison issue in this Petition. In an earlier NLRB proceeding, UMW's counsel admitted that the 80-cent clause was binding on an "affiliate" of Riverton. UMW's counsel stated, "We admit that that is the effect of the contract." (591-592)

The UMW argues that to be an "affiliate" an entity "must possess the characteristics that would permit it to be

an owner" or producer or operator of a coal facility and that Davison thus did not qualify. (Petition, 48) The UMW misreads the clause, which clearly states that "this Agreement covers the operation of all of the coal lands * * * owned or held under lease by [Riverton] * * * or by any * * * affiliate * * *." Therefore, if the land or facility is owned or operated either by Riverton or by Davison it is covered by the clause. (608)

2. The Court of Appeals Decision Does Not Conflict With Applicable Decisions of This Court.

a. There is no conflict with National Woodwork Manufacturers Association v. NLRB.

One of the decisions of this Court principally relied upon in the Petition is *National Woodwork Mfgrs. Assn.* v. *NLRB* (1967) 386 U.S. 612. (Discussed in the Petition at pages 36-39) The Petition says that a "classic guideline" of *National Woodwork* is the statement therein, "The touchstone is whether the agreement or its maintenance is addressed to the labor relations of the contracting employer vis-a-vis his own employees' and stresses that "Section 8(e) was designed to condemn subcontracting clauses possessing secondary pressure characteristics." (Petition, page 37) Also, quoting from the decision of this Court, it is said that:

> "* * * whether a union-management agreement falls within the scope of Sections 8(e) and 8(b)(4) 'cannot be made without an inquiry into whether, under all the surrounding circumstances, the Union's objective was preservation of work . . . , or whether the agreements and boycott were tactically calculated to satisfy union objectives elsewhere.' " (Petition, page 36)

Finally, reference is made to "*National Woodwork's* holdings that Section 8(e) is not subject to literalism (386 U.S.

619-25) and that the Act's Section 8(b)(4) is 'not to be read as supporting a construction of the statute *as prohibiting the incidental effects of traditional primary activity*' (p. 632)." (Petition, page 38)

In disposing of these contentions of the Petitioner, the Court of Appeals stated:

> "The trouble is that the clauses in question here were not 'addressed to the labor relations of the contracting employer [Riverton] vis-a-vis his own employees', but on the contrary, to the boycotted employers (non-signatory suppliers), *National Woodwork Mfrs. Ass'n* v. *NLRB*, 386 U.S. 612 (1967)." (A-71a)

Thus, far from disregarding the *National Woodwork* decision of this Court, the Court of Appeals actually applied the "classic guideline" in reversing the District Court and directing judgment for Riverton and Davison.

The situation here presented is quite different from that involved in *National Woodwork*. The challenged union conduct in *Woodwork* "related *solely* to preservation of the traditional tasks of the jobsite carpenters." (81-82; emphasis added) In the instant case, work preservation, if any object at all, was not the *sole* object.

In the instant case, the Court of Appeals correctly concluded, as noted elsewhere above, that, "* * * the supplemental coal which Riverton and Davison were purchasing * * * involved work which was never performed by their own employees" and that:

> "The eighty cent penalty clause was not directed at job security, because Riverton could comply therewith by closing its mines, discharging all of its employees, and filling its entire requirements with coal from other signatory mines. Furthermore, Riverton could purchase

coal from a signatory mine supplier whose employees were operating under substandard wages and working conditions." (A-71a)

In the instant case, unlike *Woodwork*, the District Court as well as the Court of Appeals specifically found that the UMW did have secondary objectives in forcing the 80-cent clause on the Respondents. Thus, our case does not involve merely "the incidental effects of traditional primary activity." Here, clearly, "the agreements and boycott were tactically calculated to satisfy union objectives elsewhere." Thus, instead of violating the *National Woodwork* decision, the decision of the court below adheres to and applies the standards laid down in the *Woodwork* case.

The *National Woodwork* decision disposes of another argument advanced by the Petitioner. The Petitioner has cited the proviso added to Section 8(b)(4)(B) in 1959 as authority for its position. (Petition, page 35) That proviso states "nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing." It is quite clear, however, that the above language, added in 1959, was not intended by Congress to change in any way the earlier decision of this Court in *Denver Building Trades, supra.* In discussing the proviso in *National Woodwork,* this Court stated that in the 1959 amendments:

> "The word 'concerted' in former §8(b)(4) was deleted to reach secondary conduct directed to only one individual. This was in response to the Court's holding in Labor Board v. International Rice Milling Co., 341 U.S. 665, 95 L.Ed. 1277, 71 S. Ct. 961, that 'concerted' required proof of inducement of two or more employees. But to make clear that the deletion was not to

> be read as supporting a construction of the statute as prohibiting the incidental effects of traditional primary activity, Congress added the proviso * * *." (386 U.S. at 632)

After the proviso was inserted, Congress took pains to make it clear that the proviso was not to affect in any way the construction of Section 8(b)(4)(B) given earlier by this Court in its *Denver Building Trades* decision, *supra*. The Conference Report stated:

> "The purpose of this provision is to make it clear that the changes in section 8(b)(4) do *not* overrule or qualify the *present* rules of law permitting picketing at the site of a primary labor dispute. *This provision does not eliminate, restrict, or modify the limitations on picketing at the site of a primary labor dispute that are in existing law. See, for example, NLRB v. Denver Building and Construction Trades Council, et al. (341 U.S. 675 (1951))* * * *" (Leg. Hist. of the Labor Management Reporting and Disclosure Act of 1959, Vol. 1, page 942; emphasis added)

Also, in Senator Goldwater's summary of the amendments of September 14, 1959, it is stated that:

> "[The proviso] does not eliminate, restrict or modify the limitations on picketing at the site of a primary labor dispute which were applicable prior to this amendment. *The rules laid down in certain decisions with respect to such picketing are still the law, as for example, in NLRB* v. *Denver Building and Construction Trades Council, et al.*, 341 U.S. 675 (1951) * * *." (Leg. Hist., *supra*, Vol. 2, page 1857; and see other citations to Legislative History set forth in footnotes 20 and 21 of *National Woodwork Mfgrs. Ass'n* v. *NLRB*, *supra*.)

What has been said above about *National Woodwork* also answers the Petitioner's contentions about *Fibreboard Paper Products Corp.* v. *NLRB* (1964) 379 U.S. 203 (Petition, pages 36-37). In *Fibreboard*, it was held that the contracting out of work is a subject of mandatory bargaining. *Fibreboard* did not qualify in any way the earlier decision of this Court in *Denver Building Trades, supra*, that union coercive conduct loses its protection if any object of such conduct is secondary, as in the instant case.

b. There is no conflict with the Coronado decisions.

The Petition at pages 41-44 cites as authorities this Court's two *Coronado* decisions. (*UMW* v. *Coronado Coal Co.* (1922) 259 U.S. 344 and *Coronado Coal Co.* v. *UMW* (1925) 268 U.S. 965) Principal reliance is placed on the "first *Coronado*" case which held that "Only the Board" of the International Union could ratify strike action of lesser union officials so as to make the International itself financially responsible. (259 U.S. 394, quoted in Petition at page 45) But this holding in "first *Coronado*" is inapplicable to an action brought under Section 303. Section 303, enacted in 1947, long after the *Coronado* decisions, states, in paragraph 303 (b), that suits under 303 are "subject to the limitations and provisions of section 301 hereof." Section 301(e), applicable under 303, states that:

> "* * * in determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling."

The history of the above amendments is reviewed in *United Mine Workers* v. *Patton* (CA 4, 1954) 211 F. 2d 742,

cert. den. (1954) 348 U.S. 824, at pages 747-50. In *Patton*, the UMW made the same contention with respect to the *Coronado* cases that it has made in the instant case. (211 F. 2d at 747, fn. 1) In the *Patton* opinion, Senator Taft is quoted as stating that:

> "* * * this definition was written to avoid the construction which the Supreme Court in the recent case of United States against United Brotherhood of Carpenters placed upon section 6 of the Norris-LaGuardia Act which exempts organizations from liability for illegal acts committed in labor disputes unless proof of actual instigation, participation, or ratification can be shown. * * * *The conferees agreed that the ordinary law of agency should apply to employer and union representatives.*"

The Senator stated that:

> "* * * *union business agents or stewards, acting in their capacity of union officers, may make their union guilty* of an unfair-labor practice when they engage in conduct made an unfair-labor practice in the bill, *even though no formal action has been taken by the union to authorize or approve such conduct.*" (Leg. Hist. of LMRA, Vol. 2, page 1622, quoted in *Patton* at page 748; emphasis added)

In *Patton*, the Court held that the *Coronado* rule applied by the Supreme Court in the *Carpenters* case, *supra*, "was not adopted by the Labor Management Relations Act and that its application to suits under that act was expressly excluded by section 301(e) * * *." The Court added that:

> "The history of the Act shows clearly that the intent of Congress was to apply to suits of this character the common law rules with respect to liability for acts of an agent." (211 F. 2d at 747)

Both lower courts found that when Emery McCoy told the Union members that there was no contract, the statement was a "signal" for the employees to strike. Petitioner contends this finding violated *Coronado*. As *Coronado* is inapplicable the argument fails. Moreover, it is abundantly clear that such a knowing misrepresentation by a UMW District Representative constitutes *encouragement* to strike, which is all that is required for liability under Section 8(b)(4). The NLRB itself recognizes this elementary principle. In *Meat Cutters Local 421* (1949) 81 NLRB 1052, the Board stated:

> "A strike call may be given in forthright fashion, or informally in a manner which is understood by the initiated. *A strike may be as effectively signalled by a simple statement that an employer has refused to sign a collective bargaining contract when the union policy is 'No contract—no work,' as by a direct strike call from the union leadership to the union members of the failure to reach agreement on a new contract.*" (At 1057; Emphasis added)[6]

In advancing its *Coronado* argument, the Petitioner has also misconstrued and misapplied *UMW* v. *Gibbs* (1966) 383 U.S. 715 (cited in Petition at pages 21 and 44). In *Gibbs*, this Court explicitly held that under Section 303 "the responsibility of a union for the acts of its members

---

6. Accord: *United States* v. *International Union UMW* (D.C. D.C., 1948) 77 F. Supp. 563, 566-67, aff. (CA D.C., 1949) 177 F. 2d 29, cert. den. (1949) 338 U.S. 871. *Lewis* v. *Benedict Coal Co.* (CA 6, 1958) 259 F. 2d 346, mod. on other gds. (1960) 361 U.S. 459; *United Textile Workers* v. *Newberry Mills, Inc.* (W.D. S.C., 1965) 238 F. Supp. 366, aff. (CA 4, 1963) 315 F. 2d 217, cert. den. (1963) 375 U.S. 818; *Pressmen's Local 17* v. *Oregonian Publishing Co.* (D.C. Ore., 1960) 188 F. Supp. 859, aff. (CA 9, 1960) 286 F. 2d 4, cert. den. (1961) 366 U.S. 912; *United States* v. *Railroad Trainmen* (N.D. Ill., 1951) 96 F. Supp. 428; *Vulcan Materials Co.* v. *Steelworkers* (CA 5, 1970) 430 F. 2d 446.

and officers is to be measured by reference to *ordinary doctrines of agency,* rather than the more stringent standards of § 6" of Norris-La-Guardia. (383 U.S. at 736; emphasis added) The Court held that Section 6 remained applicable to "state claims" whether or not "they are associated with *claims under § 303 to which the section does not apply.*" (383 U.S. at 737; emphasis added) The Court concluded that *Gibbs* was not to be decided under Section 303, but under state law and such finding, which removes *Gibbs* from the ambit of the instant case, explains the language from *Gibbs* quoted by the Petitioner.

c. There is no conflict with NLRB v. Truck Drivers Local 449.

The Petitioner cites *NLRB* v. *Truck Drivers Local No. 449* (1957) 353 U.S. 87 as holding that "multiemployer collective bargaining was permissive." That is no issue in this case. The trial court expressly found that Riverton "was not, in either year, a member of any 'multiemployer' bargaining group." (37)

The Petitioner's effort to justify its 80-cent clause on the basis of "the bituminous coal industry's history of collective bargaining" is erroneous. (Petition, page 36) In *UMW* v. *Pennington* (1965) 381 U.S. 657, this Court said, at 666:

> "But there is *nothing in the labor policy* indicating that the union and the employers *in one bargaining unit* are free to bargain about the wages, hours and working conditions of *other bargaining units* or to *attempt to settle these matters for the entire industry.* On the contrary, the *duty to bargaining unit by unit* leads to a quite different conclusion. *The union's obligation to its members would seem best served if the union retained the ability to respond to each bargain-*

ing situation as the individual circumstances might warrant, without being strait-jacketed by some prior agreement with the favored employers." (Emphasis added)

3. There Is No Conflict Between the Circuits on the Same Matter.

The decision of the Sixth Circuit in the instant case is the first and only decision in any Circuit in the country in a Section 303 damage action involving the validity of the UMW's 80-cent penalty and coal lands clauses. As pointed out by the Court of Appeals in its decision herein, the NLRB has considered the validity of the clause and has decided the question several different ways. (A-73a) The *NLRB* case has been considered by the Court of Appeals for the District of Columbia. (350 F. 2d 801; 399 F. 2d 977) Decisions in damage cases under Section 303 are decided by the Federal courts on their own facts, however, and are not controlled in any way by decisions in NLRB proceedings. In *International Longshoremen's Union* v. *Juneau Spruce Corp.* (1952) 342 U.S. 857, this Court held that Section 303 and 8(b)(4) provide separate and independent remedies. The Court said:

> "The fact that the two sections have an identity of language and yet specify two different remedies is strong confirmation of our conclusion that the remedies provided were to be independent of each other. Certainly there is nothing in the language of § 303 (a)(4) which makes its remedy dependent on any prior administrative determination that an unfair labor practice has been committed. Rather, the opposite seems to be true." (342 U.S. at 244)

Accord: *United Brick and Clay Workers* v. *Deena Artware, Inc.* (CA 6, 1952) 198 F. 2d 637, cert. den. (1952)

344 U.S. 897, rehearing den. (1953) 344 U.S. 199; *NLRB* v. *Deena Artware, Inc.* (CA 6, 1952) 198 F. 2d 845, cert. den. (1953) 345 U.S. 906; *Old Dutch Farms, Inc.* v. *Teamsters Local 584* (CA 2, 1966) 359 F.2d 598, 602-3, cert. den. (1966) 385 U.S. 832; *Old Dutch Farms* v. *Milk Drivers* (E.D. N.Y., 1968) 281 F. Supp. 971.

At the trial, it was admitted by all parties that the 80-cent penalty clause was drafted as a "substitute" for the union standards clause (PWC) which had been held invalid by the NLRB. *Raymond O. Lewis, et al.* (1964) 148 NLRB 249.[7] The Sixth Circuit has already found that the PWC was an agreement "to boycott coal not produced in conformity with the National Agreement." *Tennessee Consolidated Coal Co.* v. *UMW* (CA 6, 1969) 416 F. 2d 1192, 1198, cert. den. 379 U.S. 964.

Also, in *Pennington, supra*, Mr. Justice Goldberg, who before ascending the bench, was a union lawyer, stated in a footnote in his separate opinion that PWC "bristles with potential unfair labor practices." (381 U.S. at 708)

In any event, the trial court's assertion that "an admitted substitute is the equivalent of what it was substituted for" is a basic error. The validity of the 80-cent clause must be and has been determined on its own merits. It cannot be established by the mere fact that the clause is a "substitute" for PWC. It is a transparently false syllogism to state that if PWC is legal and the 80-cent clause is a substitute for the PWC, the 80-cent clause must be legal. The scheme and wording of each clause determines its own validity.

Riverton was never a party to the PWC case. It was a belated *amicus*, but had no opportunity to introduce evidence or to establish the facts about the PWC as ap-

7. The validity of the PWC is now before the Court of Appeals for the District of Columbia. *Dixie Mining Co.* v. *NLRB* Case No. 23,947.

plied to itself or any other company. The legality of the 80-cent clause as applied to Riverton cannot be determined by reference to the PWC litigation.

The effort of the Petitioner to develop conflicts between the instant decision and decisions of other Circuits on other questions likewise fails. The facts in *Teamsters Local 710* v. *NLRB* (CA D.C., 1964) 335 F. 2d 709 are significantly different from those in the instant case. The union was seeking fairly claimable jobs, held to be a legitimate primary objective, and this objective was not commingled, as in the instant case, with illegal secondary objectives. Hence, the decision is in no way inconsistent with that in the instant case.

There is no conflict between the instant decision and that in *Retail Clerks Local 770* v. *NLRB, supra.* There also, the sole objective of the union was to protect work which its own members had been performing inside the picketed stores. No secondary objectives were commingled.

Clearly, there is no conflict between the instant decision and decisions of other Circuits cited on pages 45-46 of the Petition holding in particular cases that particular local unions were not subordinate bodies of their International Union and were autonomous legal entities.[8] Each of these cases was decided on the basis of its own facts and the evidence of domination or lack of domination proffered by the parties. In the instant case, the Court of Appeals did not hold that the UMW was responsible for the actions of its Local solely because the Local was char-

---

8. *Busby* v. *Electric Utility Employees' Union* (CA D.C., 1945) 147 F. 2d 865; *Morgan Driveway, Inc.* v. *Teamsters* (CA 7, 1959) 268 F. 2d 871; and *T. S. Ragsdale Co., Inc.* v. *Teamsters Local 509* (D.C. S.C., 1972) F. Supp. , 79 LRRM 2219. None of the above decisions involved the United Mine Workers Union.

tered by the International. Here, the controls in the UMW Constitution detailed in the evidence established that Local 1209 was not, in fact, an autonomous entity separate and distinct from the UMW, but instead was merely an administrative arm of the UMW dominated and controlled by the UMW. (640-664; 436-444) Also, there was direct evidence here of encouragement and coercion by admitted UMW agents. (Section 1a, *supra*)

The Sixth Circuit decisions referred to by the Petitioner turned on their own facts. *Harnischfeger Corp.* v. *Sheet Metal Workers* (CA 6, 1970) 436 F. 2d 351 did not involve the Mine Workers Union or its Constitution. In *Garmeada Coal Co.* v. *UMW* (CA 6, 1956) 230 F. 2d 945; (D.C. E.D. Ky., 1954) 122 F. Supp. 512, International Representatives took immediate and effective steps to end the strike in breach of contract which had been called by the President of the Local and gained no benefits from the strike itself. The trial judge found from the evidence "that these representatives of the Union did all that could reasonably have been expected of them in observing their duty to exercise their best efforts to maintain the integrity of the contract and to prevent the strike" and made "Urgent appeals to the men to discontinue their strike and return to their work." (122 F. Supp. at 518) The Court of Appeals, affirming, found "That the field agent made urgent appeals to the men to discontinue the strike and return to work." (230 F. 2d at 945) By contrast, in the instant case, Emery McCoy actively signalled the strike in 1964. In 1966, there is no evidence that the UMW did anything to end the strike other than to send one telegram.

> "The only way Riverton could terminate the strike was to sign the 1966 amendment to the National contract, which it did under protest. Upon signing it, the strike ended. UMW was successful." (A-74a)

The court said:

> "UMW did nothing to persuade its members to return to work other than to send them a telegram. It did not even tell them that they had a valid contract which was being violated by their work stoppage. It did not undertake to discipline the strikers. Its inaction was a form of influence and persuasion. On the other hand, UMW benefited by the strike and took advantage of that fact to get a new contract." (A-74a)

The Court concluded that:

> "* * * UMW, having the power to correct the unlawful action of the Local union [as set forth in its Constitution, 644] and deciding to accept the benefit of it instead of taking appropriate action to halt the strike as it was required to do under the contract, thereby induced and encouraged both the 1964 and the 1966 strike." (A-75a)

CONCLUSION

For the reasons stated above, the Petition for Certiorari should be denied. The Respondents also pray that they may have their costs expended herein.

Respectfully submitted,

J. MACK SWIGERT
ROBERT J. TOWNSEND
600 Dixie Terminal Building
Cincinnati, Ohio 45202
Attorneys for Respondents